BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION OF BANK OF AMERICA, N.A.
1102 H STREET, N.E.

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

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I. BACKGROUND

Bank of America, N A ("Applicant") proposes to install a remote automated teller machine (ATM) banking center within the ground floor of the existing building at 1102 H Street, N E , Washington, D C (Square 981, Lot 806) The property is owned by UOF-H Street LLC and the Applicant is the lessee of the ground floor The building is located in the H Street-Residential Overlay within the underlying C-2-A District

The existing nineteenth-century building on the site is two and a half stories in height and has an extremely small footprint of only 913 square feet The ground floor is located on two levels, with the upper level located in the rear The bank will occupy 798 18 square feet, or 87 45%, of the ground floor, with the remaining 107 57 square feet devoted to the separate street entrance lobby and stairs to the second floor The proposed ATM installation consists of three parts (i) the publicly available ATM lobby facing the street, consisting of approximately 178 square feet of space (19 5% of the ground floor), (ii) the secure ATM room containing the service area for the ATMs consisting of approximately 119 7 square feet of space (13 1% of the ground floor space), and (iii) a semi-secure access area in the rear allowing utility company access to the electric meters (54 8% of the ground floor space) The two ATM machines within the building will be visible from the street through the retail storefronts The remote bank facility is un-manned and visited on occasion by a vendor to service the ATMs

II. RELIEF REQUESTED AND STANDARD OF REVIEW

The Applicant seeks a special exception from section 1302 4(a), which limits the areas of ground floors that can be devoted to banks to 20 percent [1] The Applicant proposes to occupy approximately 87 45% of the ground floor area with a bank facility

Pursuant to section 1304 1, the Board of Zoning Adjustment ("BZA" or "Board") may grant relief from the 20% limitation on banks as a special exception, provided the Applicant demonstrates compliance with the following Neighborhood Commercial ("NC") Overlay standards

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[1] "No more than twenty percent (20%) of the ground level floor area shall be devoted to banks, loan offices or other financial institutions, travel agencies, or other ticket offices "

(a) The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity,

(b) Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, that justify the exception or waiver,

(c) Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions; and

(d) The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district

11 DCMR § 1304 1(a)-(d)

Additionally, an Applicant must demonstrate compliance with the special exception standards for the H Street Overlay under section 1325, many of which overlap with those of the NC Overlay

(a) The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street N E Strategic Development Plan,

(b) The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board,

(c) Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions,

(d) Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences,

(e) Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences, and

(f) The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent the design guidelines of the H Street N E Strategic Development Plan

11 DCMR § 1325 1

The Board may impose requirements pertaining to design, appearance, signs, massing, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the H Street Overlay District 11 DCMR § 1325.3 Additionally, an applicant must demonstrate that projects requiring a special exception are consistent with the design intent of the design requirements of section 1324 and the design guidelines of the H Street N E Strategic Development Plan

III. COMPLIANCE WITH SPECIAL EXCEPTION TEST

A. Purposes of NC and H Street Overlays Substantially Advanced (§ 1304.1(a))

1 *The NC Overlay*

The proposed ATM installation will substantially advance the purposes of the Neighborhood Commercial ("NC") Overlay and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity The ATM installation will promote commerce by providing convenient remote banking facilities to persons residing and working in the vicinity

The general purposes of the NC Overlay are to "[e]ncourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement, all of which will be as generally required by the Comprehensive Plan " 11 DCMR § 1300 3(a) Here, the proposed banking facility will promote the existing scale of development through the re-use of an existing small-scale building with an extremely limited floorplate The second floor of this building will be available for other permitted uses, thereby encouraging a continued mix of retail and service options

The ATM installation will also "[e]ncourage the retention and establishment of a variety of retail, entertainment, and personal service establishments, predominantly in a continuous pattern at the ground level, so as to meet the needs of the surrounding area's residents, workers, and visitors " The H Street corridor has only two full-service banks on this stretch of H Street, N E They are PNC Bank and Bank of America located across the street from one another at 8th and H Streets, N E The number of cash machines along the H Street corridor that do not charge fees to customers is extremely limited The few ATMs that do exist are unaffiliated with a major bank and charge fees set by the provider

This ATM installation is part of a reconfiguration of three nearby Bank of America facilities Presently, at 961 H Street, N E , there are two walk-up ATMs and a drive-in ATM That site is being redeveloped and the three ATMs will be relocated The drive-up will be moved to Hechinger's Mall at 1600 Benning Road, N E , and the two walk-up ATMs will be relocated to 1102 H Street, N.E The proposed installation is necessary to not only continue serving the needs of the bank's own customers but also the numerous businesses along H Street by allowing their patrons convenient and ready access to cash for purchases of goods and services, or the ability of businesses to make deposits It will directly meet the needs of the surrounding area's residents, workers, and visitors

Finally, the NC Overlay is designed to "[l]imit the maximum permitted height of new buildings so as to encourage a general compatibility in scale between new and older buildings " 11 DCMR § 1300 3(c) Because the ATM installation does not propose any new construction or increase in height of the existing building, it is fully consistent with this goal of the NC Overlay

2 *The H Street Overlay*

The proposed ATM installation will also substantially advance the purposes of the H Street Overlay District The purposes of the H Street Overlay are to implement the policies and goals of the Comprehensive Plan and H Street NE Strategic Development Plan, encourage residential uses along H Street, N E , corridor, encourage the clustering of uses into unique destination districts along the corridor, particularly provision of affordable units and reuse of upper floors, establish design guidelines for new and rehabilitated buildings that are consistent with the historic character and scale of the overlay district, and encourage the reuse of existing buildings along the corridor [2]

The Comprehensive Plan incorporates the policies and goals of the H Street NE Strategic Development Plan under the policy focus area for Capitol Hill known as the H Street/Benning Road Focus Area 10A DCMR § 1511 2 The Strategic Development Plan recommended the development of four thematic areas along the H Street corridor The ATM installation site is located within the central retail area, which extends on H Street from 7th Street to 12th Street, N E As noted in the Comprehensive Plan, "[t]his area is envisioned as the 'downtown' of the H Street community Existing retail space is to be revitalized, and new mixed use project combining ground floor retail and upper story housing are encouraged Parking is to be enhanced by removing on-street parking restrictions and identifying opportunities for structured off-street parking." 10A DCMR § 1511 6

The H Street Strategic Development Plan recommends that the central retail district should include initiatives "to increase the competitiveness of existing businesses, attract new investment, encourage the renovation of storefronts and buildings, attract small office and apartment uses in upper story spaces, and encourage infill development on vacant and underutilized sites " (p 23)

[2] The purposes of the H Street Overlay also include the encouragement of residential uses, the reuse of existing buildings, and the redevelopment of those portions of Squares 1026, 1027, 1049, and 1050 within the overlay but not fronting on H Street Because this site is not located in these squares and fronts on H Street, this provision is inapplicable

The proposed ATM installation promotes these policies and goals of the Comprehensive Plan and H Street Strategic Development Plan by revitalizing ground floor retail space and renovating an existing storefront. The proposed banking service will help increase the competitiveness of existing businesses and attract new investment by supporting commerce in the central retail district and the businesses that line the H Street corridor

3 *No Adverse Effects to Neighboring Property and No Detrimental Effects*

The proposed ATM facility's occupancy of 87 45% of the ground floor will not adversely affect neighboring properties, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity To the contrary, the proposed ATM installation will enhance the retail corridor by providing safe and convenient access to cash that workers and residents can use for the purchase of goods and services along H Street

B. Exceptional Circumstances Justifying the Exception (§ 1304.1(b))

Exceptional circumstances pertaining to the property, as well as economic and physical conditions in the immediate area, justify an exception to the 20% ground floor occupancy limitation on banks First, the Applicant is constrained by the existing building on the site, which has an extremely small floor plate and a two-level ground floor Second, a safe, efficient and convenient ATM facility requires a minimum amount of space to accommodate a secure lobby area for customers, the ATMs and secured service area, and the semi-secured access area for utility maintenance The proposed lobby and ATM secured service area occupy just less than 300 square feet of space, with the remaining 500 square feet devoted to accessory access In order to meet the 20% limitation, the building would need a ground floor area of approximately 4,000 square feet While an ATM facility could meet the 20% ground floor limitation in a building with a larger footprint, the exceptionally small size of the existing building is insufficient to accommodate the minimum ATM requirements The ground floor is also extremely inefficient and awkward due to its split level The economic and physical conditions in the immediate area also justify the exception Presently, there are a limited number of ATMS in the H Street corridor, thereby causing hardship to residents and workers in need of cash that can be used for the purchase of goods and services in the immediate area

C. No Objectionable Vehicular or Pedestrian Traffic (§ 1304.1(c))

The ATM facility is designed to capture existing pedestrian traffic along H Street and it is not expected to generate any independent vehicular trips to the site Any passenger vehicle traffic to the site would have access to on-street parking The facility does not provide any vehicular access or egress and thus will not be in conflict with any principal pedestrian ways, or otherwise create any dangerous or objectionable traffic conditions

D. Board Imposed Conditions (§§ 1304.1(d) and 1325.3)

The facility has been attractively designed to comport with the H Street design guidelines, provide high-visibility and secure access to remote banking services that will support residents, workers and business in the community Consequently, the Applicant does not anticipate the need for any additional conditions or design requirements for the successful operation of the ATM installation

E. Project Comports with Design Requirements (§ 1325.1(a))

1 *H Street Overlay Design Requirements*

The proposed ATM installation is consistent with the design intent of the H Street Overlay design requirements of section 1324, to the extent they are applicable Virtually all of the design requirements of the H Street Overlay District apply to new construction, residential uses, or parking structures, none of which apply to this application *See* 11 DCMR §§ 1324 1 – 1324 7, 1324 11 – 1324 13 Under section 1324 8, each commercial use with frontage on H Street, N E , shall devote not less than 50% of the surface area of the streetwall at the ground level to display windows having clear or clear/low-emissivity glass, and to entrances to commercial uses or to the building As shown on Sheet A02 02 of the attached architectural drawings, 50% or more of the ground level streetwall and commercial entrance are devoted to clear display windows No security grilles are proposed and thus section 1324 9 is in applicable In compliance with section 1324 10, the commercial use for this building is provided an individual public entrance directly accessible from the public sidewalk on H Street Because no projection signs are proposed for this ATM installation, section 1324 14 is inapplicable As shown on Sheet A02 02, the Applicant proposes to install a façade panel sign on the brick façade above the display windows As such, it will not interrupt windows or doors, and does not project more than 12 inches from the face of the building, in full compliance with section 1324 15 Consistent with section 1324 16, no roof sign is proposed

2 *H Street N E Strategic Development Plan Design Guidelines*

a *Storefront Configuration* The proposed alterations to the building to accommodate the ATM installation comport with the storefront configuration guidelines The windows and doors of the ground floor will occupy no less than 60 percent of the total storefront, windows are set no more than 18 inches above the ground and within 12 inches of the finished ceiling, transom windows are located above the doors and storefront; no black glass, opaque glass or other "false window" techniques are used, no garage, security or service doors face the street, and there are no wire mesh security grilles

b *Storefront Materials* The proposed alterations to the building to accommodate the ATM installation also comport with the storefront material guidelines The storefront is comprised of a combination of brick, wood, metal or glass, the windows and doors are made of aluminum or wood, and may be painted, the windows and doors use clear close providing an unobstructed view into the ATM lobby of at least 12 feet, the storefront doors are more than 50% clear glass, including the secure access door on H Street

c. *Storefront Finishes* The proposed alterations to the building to accommodate the ATM installation also comport with the storefront finishes guidelines. The existing brick façade will remain and metal framing will be used for the windows

d *Windows and Doors* The proposed alterations to the building to accommodate the ATM installation also comply with the guidelines for windows and doors with respect to configuration, materials and finishes Windows and doors are vertically oriented and extend to within

24 inches of the building corner Window frames are of wood or metal; the door will be wood, glass or steel, and no changes are proposed to the other windows or doors on the building

e *Awnings and Canopies* The proposed ATM installation does not include any awning or canopies and, as such, these guidelines are inapplicable

f *Walls* The proposed ATM installation will maintain the existing nineteenth century streetwall of the building and thus will comply with these provisions

g *Roofs, Parapets and Cornices* The proposed ATM installation does not propose any changed to the building above the storefront level and, as such, these guidelines are inapplicable

F. Architectural Enhancement of Immediate Vicinity (§ 1325.1(b))

The architectural design of the project enhances the urban design features of the immediate vicinity and the existing structure The building is not a landmark or located within an historic district and thus no review by the Historic Preservation Review Board is required

G. Vehicular Access and Egress (§ 1325.1(c))

This requirement regarding vehicular access and egress is the same as section 1304 1(c) of the NC Overlay discussed above

H. Parking and Traffic Conditions (§ 1325.1(d))

As discussed above under the NC Overlay requirements, parking and traffic conditions associated with the operation of a proposed will not adversely affect adjacent or nearby residences

I. No Adverse Noise Impacts (§ 1325.1(e))

The ATM will not generate any noise and thus will not adversely affect adjacent or nearby residences

J. Signage Compatible with Surrounding Corridor (§§ 1325.1(f) and 1325.2)

The proposed signage is consistent with the size, type, scale and location of other signs within the H Street corridor and is consistent with the design guidelines of the H Street N E Strategic Development Plan, as discussed above The signage will be exclusively located above the show window, construct of durable materials and sensitively designed The signage will not affect the display windows, will not consist of backlit box signs or neon product advertisements, will not block visibility into the ATM lobby and will not be overly obtrusive

K. Compliance with H Street N.E. Strategic Development Plan (§ 1325.4)

This provision duplicates the requirements of section 1325 1(a) and is addressed above

IV. NO HARM TO PUBLIC GOOD OR ZONE PLAN

The proposed ATM installation, as described above, will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps

V. CONCLUSION

Pursuant to section 3113 8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. Through the Applicant's written statement, and through testimony and evidence presented at the public hearing, the Applicant will demonstrate how it meets its burden of proof to obtain the Board's approval of the requested relief